IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6430 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GABHABHAI ZANABHAI SOLANKI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR TR MISHRA for Petitioner(s) : 1,

MR DS CHAUHAN for Petitioner(s) : 1,
MS RITA CHANDARANA, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/10/2005

CAV JUDGMENT

1.By filing this petition, the petitioner has prayed to quash and set aside the orders at Annexure `A' and `B'

at page 10 and 12 respectively in the compilation passed by the Controlling Authority appointed under the Payment of Gratuity Act as well as the Appellate Authority. Further prayer is made to declare and hold that the petitioner is entitled for payment of gratuity as per the Payment of Gratuity Act, 1972 and to direct the respondent to pay unpaid gratuity of Rs.31,417/- together with 18% interest from the date it is due and payable.

2. It is the case of the petitioner that the petitioner was initially appointed in the year 1967 and has put in more than 28 years of service. The petitioner retired from the service of the respondent on 28.02.1995. It is also the case of the petitioner that the petitioner is getting pension of Rs.1500/- per month. It is the case of the petitioner that basic salary of the petitioner was Rs.2394/- and the amount of Rs.31,417/- was paid less and, therefore, the petitioner made an application before the Controlling Authority under the Payment of Gratuity Act, 1972 (“the Act” for short) for remaining amount of Rs.31,417/-.

3. The authority under the Act has rejected the said application on the ground that the Payment of Gratuity Act is not applicable to the establishment of the

respondent. It appears that, thereafter, the petitioner approached the Appellate Authority by way of an appeal, who also rejected the claim of the petitioner on the same ground. Being aggrieved and dissatisfied with the aforesaid orders, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

4. It is the contention of the learned advocate appearing for the petitioner that the establishment of the Deputy Executive Engineer, Patnagar Yojana, Sub-Division No.10 is an establishment within the meaning of the Act and, therefore, the Act is applicable to the said establishment. It is submitted that the Government of Gujarat has issued the circulars and had passed the resolutions that the workmen working in the Public Works Department are entitled to gratuity as per the provisions of the Act and several such orders have been passed in various cases. It is, therefore, requested to allow the present petition.

5. On the other hand, Ms.Rita Chandarana, learned AGP has contended that the petitioner was working as Work Charge Labour on and from 30.11.1981. It is submitted that as per the Government Resolution dated 04.07.1963 and 16.11.1973, the provisions of B.C.S.R., are

applicable to the petitioner from 30.11.1981 and, therefore, gratuity is paid by the Director of Pension and Service as per the rules for the time being in force. She submitted that the action of the Controlling Authority is as per the rules and the amount of gratuity is paid to the petitioner for the period applicable to him. It is, therefore, requested to dismiss the present petition.

6. I have given my thoughtful consideration to the submissions made by the learned advocates appearing for the parties and I have also perused the material placed on record.

7. It can be noticed from the record and as pointed out by the learned AGP Ms.Rita Chandarana that the petitioner was working as Work Charge Employee on and from 30.11.1981 and it is in this view of the matter, the provisions of the Act are not applicable to the present petitioner. Further, it can be seen from the record that the gratuity is paid to the petitioner by the Director of Pension and Services as per the rules for the time being in force. It is also pertinent to note that the petitioner was the Government Employee and the provisions of the B.C.S.R., are applicable to him and, therefore, by no stretch of imagination, it can be said

that the provisions of the Payment of Gratuity Act, 1972 are applicable in the case of the petitioner. It is also the case of the petitioner before the Appellate Authority that he has been retired from service on attaining the age of superannuation and he has been paid the gratuity and the pension as per the B.C.S.Rules. Therefore, the Appellate Authority has come to the conclusion that the provisions of the Payment of Gratuity Act, 1972 are not applicable to the case of the petitioner.

8. Considering the aforesaid facts and circumstances of the case, I am of the considered opinion that the provisions of the Payment of Gratuity Act, 1972 are not applicable to the case of the petitioner and, therefore, the authorities below have rightly rejected the claim of the petitioner. Under the circumstances, I do not find any substance in this petition and, therefore, the same is required to be rejected.

9. In the result, this petition is dismissed. Rule discharged. No costs.

(SHARAD D DAVE, J)

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